

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SCHNUCK MARKETS, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
FIRST DATA MERCHANT DATA)	Case No. 4:13CV2226 JAR
SERVICES CORP., and)	
CITICORP PAYMENT SERVICES, INC.)	
)	
Defendants.)	

PLAINTIFF SCHNUCK MARKETS, INC.'S MOTION TO STAY DISCOVERY

Plaintiff/Counterclaim-Defendant Schnuck Markets, Inc. ("Schnucks"), by and through their counsel of record, move this Court pursuant to Federal Rule of Civil Procedure 26(c) and its inherent authority for an order staying discovery until resolution of the parties' cross-motions for judgment on the pleadings. In support of this Motion, Schnucks states as follows:

1. On November 4, 2013, Schnucks initiated this action by filing a Complaint against Defendants First Data Merchant Services Corp. and Citicorp Payment Services, Inc. asserting causes of action for Breach of Contract and Declaratory Judgment, and alleging that Defendants have wrongfully withheld money owed to Schnucks by blatantly disregarding the plain language of the parties' contract that limits liability for issuer losses to \$500,000. (Dkt. # 9.)
2. On January 21, 2014, Defendants filed their Answer, Affirmative Defenses, and Counterclaim, which seeks a contrary declaratory judgment. (Doc. # 20.)
3. Defendants filed their Motion for Judgment on the Pleadings (Doc. #37) on May 19, 2014. Schnucks filed a Partial Cross-Motion for Judgment on the Pleadings and Opposition to Defendants' Motion for Judgment on the Pleadings (Doc. # 43) on June 9, 2014.
5. Briefing on the parties' motions for judgment on the pleadings is now complete.

6. On August 7, 2014, Defendants served their initial discovery requests on Schnucks. A copy of Defendant First Data's First Request for the Production of Documents Addressed to Plaintiff is attached as Exhibit A. A copy of Defendant First Data's First Set of Interrogatories Addressed to Plaintiff is attached as Exhibit B. A copy of Defendant Citicorp's First Set of Interrogatories Addressed to Plaintiff is attached as Exhibit C. Schnucks' responses to these discovery requests are currently due on September 8, 2014. In addition, Defendants noticed a Rule 30(b)(6) deposition on eight different topics. A copy of Defendants' Rule 30(b)(6) Notice is attached as Exhibit D.

7. Pursuant to Federal Rule of Civil Procedure 26(c) and this Court's inherent authority, Schnucks moves for an order staying discovery pending resolution of the motions for judgment on the pleadings.

8. The discovery requests served by Defendants are focused on topics that might only be relevant if the contract language at issue was ambiguous—an argument neither side has made.

8. Indeed, the parties agree in the motions that the contract language at issue is not ambiguous.

9. A ruling granting either motion will be dispositive.

10. If discovery is permitted to proceed now and the Court grants one of the motions, the parties will have needlessly incurred attorney's fees and wasted corporate resources.

11. A stay of discovery will conserve judicial resources and avoid potentially unnecessary and wasteful discovery expenses to the parties.

12. A stay of discovery will not result in any prejudice to Defendants. This case was filed less than a year ago, there have been no prior extensions of the discovery deadlines, and there are no unusual circumstances that would suggest a need to proceed with discovery.

13. Pursuant to Local Rule 37-3.04(A), on August 8, 2014, Craig Hoffman, counsel for Schnucks, contacted Josh Horn, counsel for Defendants, by telephone and they conferred in good faith about this request for a stay but were unable to reach an accord.

WHEREFORE, Schnucks respectfully requests that this Court enter a stay of discovery pending resolution of the parties' cross-motions for judgment on the pleadings.

Dated: August 13, 2014

Respectfully submitted,

By: /s/ Kevin F. Hormuth
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Attorneys for Plaintiff Schnuck Markets, Inc.

CERTIFICATE OF SERVICE

I certify that on the 13th of August, 2014, the foregoing *Motion to Stay Discovery* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By: /s/ Kevin F. Hormuth
Kevin F. Hormuth